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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,234	02/01/2002	Jean-Louis H. Gueret	05725.1017-00	8084
22852	7590	08/08/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			LE, HUYEN D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/060,234	GUERET, JEAN-LOUIS H.	
Examiner	Art Unit		
Huyen Le	3751		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 24 May 2005.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) See Continuation Sheet is/are pending in the application.  
4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204 and 206-212. is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

Continuation of Disposition of Claims: Claims pending in the application are 1,3-9,11-83,85-108,110,112-116,118-121,123-128,130-133,135-156,158-182,184-192,194-199,201-204 and 206-214.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 8-21,52-59,68,69,92-95,124-128,130,131,142,143,165-168,195-199,201,202,213 and 214.

## **DETAILED ACTION**

### ***Response to Arguments***

1. In view of the Appeal Brief filed on 05/24/2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-9, 11-17, 22-42, 45-51, 60-67, 70-76, 78-83, 85-91, 96-108, 110, 112-114, 118-121, 123, 132, 133, 135-141, 144-149, 151-156, 158-164, 169-182, 184-186, 189-192, 194, 203, 204, 206-212 are rejected under 35 U.S.C. 102(b) as being anticipated by Gray (4,594,835).

The gray reference discloses a device comprising a first portion 4 defining a recess 5; a second portion 1 movable with respect to the first portion 4 so as to selectively place the device in one of a closed position and an open position, wherein the first portion 4 and the second portion 1 define a substantially closed reservoir when the device is in the closed position, and an application member 10 attached to the second portion 1 (in a closed position), the application member 10 made of foam and being at least partially compressible and configured such that, when the device is in the closed position, the application member 10 is at least partially compressed inside the substantially closed reservoir and, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed, wherein the application member is configured so that when the application member is uncompressed, the application member is capable of being loaded with substantially all of an amount of product that the device is capable of containing (col. 3, lines 4-7).

Regarding claims 60-70, 132-141, 203, 204, 206-212, the method of applying a product by with the device would be inherently performed during the normal operation of the Gray device.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Art Unit: 3751

5. Claims 3, 77, 150 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (4,594,835) in view of Hitchcock, Jr. et al (4,519,795).

Although Gray does not disclose that the application member 10 to the second portion 1 by bonding, attention is directed to the Hitchcock, Jr. et al reference which teaches another application device having a pad attached to a plastic strip by an adhesive (col. 2, lines 45-49).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to attach the application member of Gray device to the second member (top foil 1) in view of the teaching of the Hitchcock, Jr. reference so that when opening the sachet, the top foil can be used as a handle to apply the product on a user without soiling a user's hand.

6. Claims 43, 44, 115, 116, 187, 188 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (4,594,835) in view of Hitchcock, Jr. et al (4,519,795).

Although the Gray reference does not specifically disclose that the sachets (device) are removably joined by a frangible portion, attention is directed to the Hitchcock, Jr. et al reference which teaches another sachet device including a number of sachets 10 removable joined together by a frangible portion (scored or weakness line 38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made provide a weakness lines between the Gray sachets during manufacturing in view of the teaching of Hitchcock, Jr. et al reference to keep a

number of sachets as a unit for easy storage and transport and they can be easily tear up for use.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 3-9,11-83, 85-108, 110,112-116, 118-121,123-128, 130-133, 135-156, 158-182,184-192,194-199, 201-204 and 206-214. have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HL  
August 4, 2005

*Huyen Le*